

May 8, 2019

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

OEP/DG2E/Gas 4
Rio Grande LNG, LLC
Rio Bravo Pipeline
Company, LLC
RG LNG Project
Docket Nos. CP16-454-000 and CP16-455-000

Dear Ms. Bose: Please find my comments on the subject docket, enclosed. To summarize, the FEIS does not satisfy the requirements of NEPA for several reasons. **Many of the proposed project's impacts have not even been determined, in spite of the fact that FERC has now issued an FEIS. It is not possible to fail to meet the most basic requirements of NEPA more egregiously, than in this case. The repeated arguments that the disclosure of environmental impacts required by NEPA is simply not possible, because the sponsor hasn't yet done the necessary studies, and the additional argument that disclosure of these impacts isn't necessary because the required regulatory authorizations that are yet to be completed will ensure that impacts are acceptable, are completely outrageous, and without a doubt, fundamentally inconsistent with NEPA. For the issues I identified in the DEIS, very few were actually addressed substantively in the FEIS. Somebody should sue FERC!**

- Several key potential environmental effects of the proposed project (dredged material disposal, wetland impacts, water quality impacts to some extent) are not disclosed and made available for public review and comment. Rather, the DEIS includes a pattern of assertions that the proposed project will not result in significant environmental impacts because Federal and State regulatory agencies will ensure that is the case via their future regulatory processes. This is made even more egregious by the fact that these regulatory decisions have not yet been made. In at least one case (pipeline impacts on wetlands), neither FERC nor the sponsor even have completed data collection to determine the extent of likely impacts of their proposal. This is not consistent with NEPA. **FERC and the sponsor cannot simply avoid disclosing potential environmental impacts of the proposed project, based on generalized existing regulatory responsibilities of other agencies, and because required studies are not complete. Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS.**

- At least one major action, dredged material disposal, is still undergoing analysis of alternatives, and therefore impacts are not disclosed, except in extremely broad, general terms. It is a primary purpose of NEPA, to provide analysis of alternatives by the responsible Federal agency, for review and comment by the public. So, this DEIS does not fulfill its legal responsibilities under NEPA, regarding the proposed project's dredged material disposal. Note that this is not trivial. The sponsor proposes to dispose of on the order of 7 million cu yd of dredged material. This is a very significant volume of dredged material. The surrounding environment is also very ecologically sensitive and unique, making the decision where to dispose of this huge volume of dredged material, of great concern. This of course, is in addition to the problem discussed below. At least one of the alternatives being considered, disposal at the ODMDS, requires a very serious regulatory review, which is not fully under the control of the USACE. The FEIS fails to acknowledge in all appropriate locations in the FEIS, the co-equal role of EPA, with the USACE, in making decisions whether or not to authorize disposal of dredged material at the ODMDS. The FEIS does not acknowledge that USACE/EPA approval for disposal of dredged material at the ODMDS would require rigorous dredged material testing as per the Green Book. Neither the sponsor, FERC, nor USACE should assume that approval to dispose of the dredged material in the ODMDS is a shoe-in. Once again, the FEIS does not meet the requirements of NEPA. **Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS.**
- The DEIS asserts that the proposed project will not result in dredging or disposal of dredged material that is contaminated. It bases this assertion not on its own analysis of dredged material testing data, but on the following report:

U.S. Army Corps of Engineers. 2014. Brazos Island Harbor, Texas, Channel Improvement Project, Final Integrated Feasibility Report-Environmental Assessment

- Upon reviewing the above report, I found that the only reference to any dredged material testing data is the following. No dredged material testing data are provided in this report.

Three decades of water and chemistry data from the BIH have documented no concerns with contaminated sediments in the project area. Information describing the results of water, sediment, and elutriate water testing under current conditions are available upon request.

- So, no dredged material testing data have been disclosed as part of this DEIS, nor were any dredge material testing data disclosed as part of the Environmental Assessment issued by the U.S. Army Corps of Engineers in 2014, which is the basis for FERC and the sponsor's refusal to provide dredged material testing data. I attempted to obtain the data from the USACE as described above, and was told that I must submit a formal Freedom of Information Act Request to do so (not trivial). Requiring the public to submit a FOIA Request does not constitute meeting the NEPA requirement for disclosure of impacts. Therefore, no dredged material testing data has been disclosed under NEPA (or any other authority) that would provide for public review of the potential for the proposed project to dredge or dispose of, contaminated dredged material. This does not meet the requirements of NEPA. **Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS.**

- FERC and the project sponsor acknowledge that proposed dredging will result in increased concentrations of total suspended solids (TSS) in the Brownsville Ship Channel. However, they assert that this effect will be short-term and localized, without providing any basis for such claims. Such assertions are repeated in several places in the FEIS. However, the FEIS also includes a statement that the proposed dredging will last 14 months, and the cumulative impacts assessment concludes that if several dredging projects occur simultaneously, significant impacts on TSS could occur.

Seagrasses, highly valuable components of some coastal marine ecosystems, occur near the proposed dredging locations, including beds in the Bahia Grande, Mexique Flats, and South Bay Coastal Preserve. The seagrasses of the Mexique Flats have been identified as important habitat for the recently dramatically increasing population of juvenile green sea turtles, an endangered species, in the lower Laguna Madre. Green sea turtles have also been observed in the Bahia Grande. Seagrasses are highly sensitive to decreases in light availability, such as occurs with elevated TSS. If seagrasses are exposed to 14 months of elevated TSS, they will almost certainly be negatively impacted. And yet, FERC and the sponsor choose to dismiss this project risk with no analysis and no data. FERC does not even acknowledge the existence of seagrasses in Bahia Grande, and no analysis has been done to assess whether the proposed dredging may impact them, in spite of the fact that FERC did determine that dredging would result in elevated TSS in Bahia Grande. This is unacceptable. This is not consistent with NEPA. Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS.

- FERC and the sponsor did not demonstrate that the preferred pipeline alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA), as defined in Clean Water Act, Section 404(b)(1) Guidelines. Only the LEDPA can be permitted. FERC and the sponsor did not consider an alternative that would have crossed ALL waterbodies using HDD methods, or at least other trenchless methods. Why wasn't such an alternative considered? Clearly, this would have avoided and minimized impacts of the proposed pipelines on waterbodies, to the maximum extent possible. In such a case, it would simply be a matter of determining whether it was *practicable* or not. FERC and the sponsor should not have simply assumed that it was not practicable. They should be required to demonstrate whether or not it is. The approach taken is not consistent with the Guidelines, nor NEPA. Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS.
- FERC and the sponsor assume that most upland and wetland habitat impacts created by the proposed project can be reversed by restoration via revegetation by seeding. First, seeding is not the preferred method of revegetation in wetlands. Second, and more importantly, FERC and the sponsor acknowledge that climatic and other physical factors in the vicinity of the proposed project, make revegetation risky. In the FEIS, FERC acknowledged that successful revegetation of over 2200 acres is not likely to succeed. This acknowledgement is in complete contradiction to their assumption of simple restoration by revegetation at other locations in the FEIS. FERC and the sponsor must acknowledge that these facts are contradictory, and therefore their assumption that many of the habitat impacts (including wetland impacts) can be easily reversed with simple revegetation techniques, is erroneous. Therefore, proposed mitigation is inadequate. FERC and the sponsor must propose additional mitigation to compensate for the likely failure of efforts to revegetate. Note that this same comment was made on the DEIS, and the situation remains the same in the FEIS. However, I did find an admission in the FEIS, that 2200 acres of revegetation may not work. I'm unsure if that admission was in the DEIS.

- **Preservation is the least preferred form of wetland mitigation under the Mitigation Rule.** Based on that, I strongly recommend the proposed mitigation for wetland impacts, via preservation, be rejected. A mitigation option based on restoration or enhancement is desired. If preservation is considered, an argument consistent with the Mitigation Rule, explaining why it is an acceptable mitigation alternative, must be provided in a revised DEIS, for public comment. Any area proposed for preservation as mitigation must be the same types of wetlands that are impacted (in kind). According to the FEIS, the preservation that is proposed to compensate for unavoidable impacts to wetlands, are lomas. Lomas are not wetlands. Their preservation cannot be used as compensatory mitigation for unavoidable losses of wetlands. This is completely unacceptable under the Clean Water Act.

If preservation is considered, it must only be considered for wetlands, and only for the same types of wetlands being impacted, but also using a very high mitigation ratio. I recommend a minimum of 20:1. Only wetlands under significant unregulated threat can be considered for preservation as mitigation. The sponsor must provide a detailed argument in support of the idea that their proposed preservation tract(s) are under clear unregulated threat. Preservation must be in perpetuity. A limited term lease is unacceptable. Note that nearly the same comment was made on the DEIS, and the situation remains the same in the FEIS.

In summary, FERC should be ashamed to call this document an FEIS, and to attempt to argue that it meets the requirements of NEPA. The document is replete with outrageous assertions contrary to NEPA. Again, somebody should sue FERC (and the USACE)!

Sincerely,
Kenneth G. Teague, PWS, Certified Senior Ecologist
Austin, TX

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